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CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~486~~ 14

WILLIAM A. SHERMAN, M. F. COCHRANE, AND J. B. SANFORD, CONSTITUTING THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, ETC.,

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED NOVEMBER 19, 1929

(34,617)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 3, 1929

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT

No. 5839

WILLIAM A. SHERMAN, M. F. COCHRANE, and J. B. SANFORD, Constituting the Board of State Harbor Commissioners of the State of California, Operating the State Belt Railroad, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Upon Appeal from the United States District Court for the Northern District of California, Southern Division

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit, Certifying Questions of Law to the Supreme Court of the United States under Section 239 of the Judicial Code—Filed Nov. 12, 1929

STATEMENT OF CASE

This action was brought by the United States to recover statutory penalties for nine separate alleged violations of the Federal Safety Appliance Act and amendments thereto.

In the complaint the defendants were named and designated as "William A. Sherman, M. F. Cochrane and J. B. Sanford, Constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad."

[fol. 2] The issues were joined, jury trial duly waived, and upon a written stipulation of the facts, the trial court entered a judgment for $900.00 against the defendants as so named and designated. From this judgment the defendants have appealed and the cause has been duly submitted for decision.

The Facts

From the stipulation of facts it appears:

1. That the acts or omissions constituting the alleged violations of the Act all occurred upon and in the course of

the operation of what is known as the State Belt Railroad, owned and operated by the state of California and located wholly within the city of San Francisco.

2. The railroad is near the harbor and runs approximately parallel with the water front, between the wharves on one side and numerous industrial plants on the other. It is about five miles in length with short spurs connecting with the industrial plants and approximately 45 wharves owned by the state of California.

The line also has a physical connection with the tracks of the Southern Pacific Railroad Company from which it receives and to which it delivers cars.

The wharves belonging to the State are used by the freight car ferries of the Southern Pacific Company, the Atchison, Topeka & Santa Fe Railway Company, the Western Pacific Railway Company, and the Northwestern Pacific Railway Company, all common carriers engaged in interstate commerce by railroad; and the Belt Line receives from and delivers to these ferries freight cars belonging to the several companies.

Adjacent to the main line of the Belt Line and connecting therewith are certain freight yards of these four interstate carriers in which all switching is done by it, and all cars [fol. 3] going into and out of these yards are so hauled by it.

These yards are owned by the State but under agreement or lease with the State the interstate carriers so use them.

Spur tracks also connect with certain wharves belonging to the State where freight from incoming steamers is transferred to fregiht cars and transferred from freight cars to outbound steamers from and to points within and without the State.

None of the tracks, either main or spur, is ever used by any of these interstate carriers and no locomotive other than the locomotives of the Belt Line ever moves on any part thereof.

The Belt Line has no cars or other rolling stock with the exception of locomotive engines.

The Belt Line maintains a roundhouse but no repair shops. If by its inspectors cars are found to be defective under the requirements of the Federal Safety Appliance Act, minor repairs are made by them where the cars are

found, or in the roundhouse, and if major repairs are required the cars are sent to the repair shops maintained by the interstate carriers in their yards.

3. The industries (approximately 175) and the 45 wharves and car ferries referred to are served exclusively by the Belt Line in so far as the movement of loaded and empty cars is concerned. It moves all carload freight from these industries and wharves destined and consigned to points both within and without the State either on or beyond the lines of the four interstate carriers and it likewise receives from these carriers all carload shipments destined and consigned to these industries and delivers the same to them. It also delivers to the various steamship lines using the 45 wharves, cars, loaded and unloaded, for delivery to the carrier railroads and likewise receives cars from such railroads for delivery to the wharves for further transportation to points within and without the State.

[fol. 4] The Belt Line also moves over its line all cars, loaded and empty, between the yards of the four railroads referred to and the various wharves and transfer tracks. These last mentioned cars are for shippers or consignees who do not have industrial tracks or private sidings of their own but obtain cars and load them themselves and hire the Belt Line to transfer such cars either to the carrier roads or along the water front as the case may be. These cars are loaded by the shippers before the Belt Line switches the same and are unloaded by the shippers after it spots them for unloading. No freight is ever loaded or unloaded by the Belt Line.

Without discrimination the Belt Line moves all cars offered to it by the railroads in question, the various steamship lines using the 45 wharves, and the 175 industries referred to.

The Belt Line also hauls in like manner all cars moving between the Presidio and the steamship docks, car ferry wharves and transfer tracks.

4. The Belt Line is not a party to any through rate for the transportation of any shipment, nor does it move a shipment on any through waybill, nor does it issue any waybill or give any receipt whatever. It charges a flat rate for moving a car between two points, the rate for a loaded

car being a little higher than for an empty. These charges are uniform without consideration of destination. Occasionally it handles baggage and Pullman cars, principally between the Presidio and the various wharves or the Southern Pacific transfer docks, for which it also charges a flat rate.

5. The Belt Line is operated by the State for the purpose of facilitating commerce of the Port of San Francisco, without any profit being derived therefrom. The charges made for the services rendered by the line are made [fol. 5] pursuant to the authority conferred by Section 2524 of the Political Code of California which authorizes collection of such an amount of revenue as will enable the State officers to perform their duties as required of them by authority of Article IX of the Political Code. The defendants are appointive State officers and constitute what under the State statutes is designated as the Board of State Harbor Commissioners. They do not personally operate or supervise the operation of the Belt Line. It is operated under the immediate and personal supervision of a superintendent who is appointed and holds office at the pleasure of the Board of State Harbor Commissioners and is under the supervision and control of that Board. His subordinates, inspectors, engineers, and yardmen employed in the operation of the railroad are Civil Service employees of the State, except in cases of emergency employment due to an unusual rush of business. All persons having to do with the maintenance and operation of the road are employees and servants of the State. Among such employees at the times mentioned in the complaint were five inspectors, whose duty it was to make inspections of all appliances covered by the Federal Safety Appliance Act and the orders of the Interstate Commerce Commission issued pursuant thereto.

6. It is in terms stipulated that the defendants "did not, in any manner, personally participate in, and had no personal knowledge whatsoever of the commission of any of the alleged violations of the Federal Safety Appliance Act set forth in the causes of action, or any of them, in the complaint herein. That if the violations * * *, or any of them, occurred the said violation so occurred without the personal knowledge of defendants, or any of them, and with-

out the consent of defendants, or any of them, and contrary to the orders and instructions of defendants."

[fol. 6] 7. Further facts are stipulated in respect to the specific alleged violations from which it appears that if what was done and omitted had been done or omitted by an ordinary common carrier engaged in interestate commerce, such acts and omissions would admittedly constitute violations of the Safety Appliance Act.

Questions of Law

The Judges of the United States Circuit Court of Appeals for the Ninth Circuit, being in doubt, hereby certify to the Supreme Court of the United States questions of law arising upon the foregoing statement of facts and material to a decision of the above entitled case now pending on appeal:

1. Is the State Belt Railroad a common carrier engaged in interstate commerce within the meaning of the Federal Safety Appliance Act?

2. If No. 1 is answered affirmatively, is the State Belt Railroad (owned and operated by the State of California) subject to the Safety Appliance Act, which by general language imposes duties upon "any common carrier engaged in interstate commerce" but does not expressly refer to a State or other sovereignty? (Guarantee Company v. Title Guaranty Company, 224 U. S. 152, 155, et seq.)

3. If this question also is answered in the affirmative, and if the complaint and the judgment be construed as running against the members of the Board of State Harbor Commissioners, in their official capacity, and hence in a sense against the State, did the District Court have jurisdiction of the action?

[fol. 7] 4. Upon the other hand, if the judgment be deemed to be against the defendants in their private capacity can it be sustained in view of the considerations:

(a) That the Act imposes penalties only upon the "carrier"; and

(b) That the defendants did not own or personally manage or operate the Belt Line, and the alleged infractions of the law were due to no act or omission upon their part

and the wrong-doing was not only without their participation, consent, and knowledge but was contrary to their orders and instructions?

Frank H. Rudkin, Frank S. Dietrich, Curtis D. Wilbur, Judges.

[File endorsement omitted.]

A true copy. Attest November 12, 1929.
Paul P. O'Brien, Clerk. (Seal United States Circuit Court of Appeals, Ninth Circuit.)

Endorsed on cover: File No. 34,617. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 486. William A. Sherman, M. F. Cochrane, and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, etc., vs. The United States of America. (Certificate.) Filed November 19, 1929. File No. 34,617.